THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P. No. 24467 of 1995

Dated: 24.10.2006

Between:

Smt. D. Savitri Devi

… Petitioner

AND

The Chairman,
Jyothi Vidyalaya Educational Committee
BHEL, Ramachandrapuram,
Medak District & another.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P. No. 24467 of 1995

ORDER:-

This writ petition is filed seeking appropriate directions to the Chairman, Jyothi Vidyalaya Educational Committee, BHEL township, the 1st respondent herein, to promote the petitioner to the post of Telugu Pandit Grade-I with effect from the date of promotion of her juniors viz., Smt. T. Shyamala Devi with all consequential benefits.

In view of the fact that the writ petition is being disposed of on the ground of its non-maintainability, I need not go into the merits of the case. Suffice it to state that the respondents, against whom the writ petition is filed, are running a school, which is a recognized unaided school.

Sri K.L.N. Rao, learned counsel appearing for respondent No.2 drew my attention to the counter-affidavit, the relevant portion of which is extracted hereunder:

> "This respondent submits in the first place that this writ petition is not maintainable as the 2nd respondent school does not come within the scope of other authorities under Article 12 of the Constitution. It is submitted that the 2nd respondent school is a private un-aided school and the management of the

school vests in congregation of sisters of St.Anne, Phirangipuram in Guntur District which is purely a voluntary private organization.

The said congregation was represented at the highest level by the superior general. The establishment of the school comes into force when BHEL a public sector undertaking and the above congregation enters into an agreement on 30.01.1989. According to the said agreement, BHEL provides furnished accommodation for the school premises at a nominal licence fee at Rs.1/- per month. It was also provided that staff quarters could be provided on payment of rent to the extent possible. According to clause 5, the Managing Committee of the school consists of 6 persons viz., the Principal who shall be the chair person. Other 5 persons shall be nominated by the BHEL while two were nominated by the congregation. It is made clear that the building premises shall not be used by the school for any purposes. The school was also permitted to take outside students in addition to the wards of BHEL employees. None of the employees of the school draw their salary from BHEL and the salaries were paid by the school on behalf of the congregation of sisters. The agreement can be terminated by either party by giving a notice of one academic year. Further more, it is submitted that it is the responsibility of the school in matters of admission, appointments, administration, discipline and discharge of the school and students of the school. BHEL do not have any control in the above matters. Accordingly it is submitted that the 2nd respondent school is an un-aided school which is not falling within the meaning of other authorities under Article 12 of the Constitution. The name of the BHEL was borrowed only with a view to appear that the respondent school falls within the scope of Article 12 of which cannot be sustained in law."

Learned counsel for the petitioner fairly submitted that no reply has been filed controverting the aforementioned averments contained in the counter-affidavit. In the face of the stand taken by the

respondents, I am satisfied that the respondents do not come within the definition of State or other authorities under Article 12 of the Constitution of India. The learned counsel, however, placed reliance on a judgment of this Court reported in ***ANITA AIDINYANTZ v Dr.KEN.R.GNANAKAN AND OTHERS***[1] to buttress his contention that the writ petition is maintainable even against the unaided educational institution.

I have gone through the said judgment. In the said case an employee of a private unaided educational institution challenged termination of his employment *inter alia* on the ground that his termination is contrary to the provisions of Section 79 of A.P. Education Act, 1982. The learned Single Judge, while giving a finding that the educational institution was an unaided private educational institution interfered with the order of termination on the ground that since the termination was contrary to the statutory provisions under the A.P. Education Act, a writ is maintainable. The said judgment has no application, as the facts in the present case do not present such a situation.

The petitioner's claim for promotion and the denial of promotion to the petitioner are not based on any statutory provisions. In other words, the relief sought for in the present writ petition is not based on either violation or enforcement of any statutory provision.

For these reasons, I accept the contention of the respondents that the writ petition is not maintainable against them and hence the writ petition is dismissed, but in the circumstances without costs.

C.V. NAGARJUNA REDDY, J

Date: 24.10.2006
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[1] 1997 (1) ALD 44